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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,497	03/23/2004	Kenichi Shimazaki	1122.70096	3046

7590 11/27/2007  
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EXAMINER
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SUGLO, JANET L

ART UNIT	PAPER NUMBER
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2857

MAIL DATE	DELIVERY MODE
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11/27/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/807,497	Applicant(s) SHIMAZAKI ET AL.	
	Examiner Janet Suglo	Art Unit 2857	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 13-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 13-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on 06 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s).

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 3, 2007 has been entered.

### ***Response to Amendment***

2. The action is responsive to the Amendment filed on October 3, 2007. Claims 1-6 and 13-27 are pending. Claims 1, 5, and 21 have been amended. Claims 7-12 have been cancelled.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 1-6 and 13-27** are rejected under 35 U.S.C. 103(a) as being unpatentable over Smocha et al. (US Patent 6,694,288) in view of Bertram et al. (US Patent 6,470,464) (hereinafter "Bertram").

With respect to **claims 1 and 21**, Smocha teaches a load monitoring condition determination method for determining a load monitoring condition for performing load monitoring of a computer system comprised of one computer or a plurality of computers (col 3, ln 8-32), wherein the method comprises:

giving a load to the computer system from outside of the computer system (col 3, ln 49-54);

measuring a response or a throughput outside the computer system while the load is given to the computer system (col 4, ln 61-64; col 6, ln 38-53);

measuring a resource situation, other than the response or the throughput from the step of measuring a response or a throughput, inside the computer system while the load is given to the computer system (col 6, ln 38-53);

determining a load monitoring condition used for the load monitoring of the computer system from the amount of load given to the computer, the results of measuring the response or throughput and the results of measuring the resource situation inside the computer system (col 7, ln 56 – col 8, ln 28);

performing load monitoring on only the load monitoring condition, or conditions, determined during the load monitoring condition determining step (col 9, ln 14-55; col 12, ln 42-44; col 13, ln 3-10);

wherein the load monitoring condition includes information, regarding an item being monitoring, which computer of the computer system and which item of resources should be monitored and a threshold to be used for monitoring of the monitoring item (col 11, ln 15-30; col 12, ln 29-49; col 13, ln 3-10).

Smocha does not teach that the threshold value corresponds to a measured value of the item being monitored. Bertram teaches using a threshold value for an item being monitored (Bertram: col 11, ln 34-36). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Smocha to include the threshold of Bertram because using a threshold will allow the system to produce warnings to be sent to the user to enable them to improve the computer system (Bertram: col 3, ln 27-34, col 9, ln 48-56, col 10, ln 42-50).

With respect to **claim 4**, Smocha further teaches the limitations of parent claim 1 wherein determining the load monitoring condition (col 3, ln 8-32):

presenting, to a system administrator, information on the amount of load given to the computer system, the results of measuring the response or throughput and the results of measuring the resource situation inside the computer system (col 12, ln 16-39); and

having a part or all of the load monitoring conditions optimum for load monitoring of the computer system selected by the system administrator and setting the selected information as the load monitoring conditions (col 4, ln 55-64; col 12, ln 16-39).

With respect to **claim 5**, Smocha teaches a load monitoring condition determination system for determining a load monitoring condition for performing load monitoring of a computer system comprised of one computer or a plurality of computers, wherein the system comprises (col 3, ln 8-32),;

load generating means for giving a load to the computer system from outside the computer system (Fig. 1: 170; col 3, ln 49-54; col 4, ln 47-54);

external response and throughput measuring means for measuring a response or a throughput outside the computer system while giving the load to the computer system (col 4, ln 61-64; col 6, ln 38-53);

load monitoring condition judgment support means for determining a load monitoring condition used for load monitoring of the computer system from the amount of load given to the computer system (Fig. 1: 190; col 8, ln 13-17), the results of measuring the response or throughput (col 5, ln 7-11) and the results of measuring a resource situation, other than the response or throughput, inside the computer system while giving the load to the computer system (col 6, ln 38-53); and

means for performing load monitoring on only the load monitoring condition, or conditions, determined during the load monitoring condition determining step (col 9, ln 14-55; col 12, ln 42-44; col 13, ln 3-10);

wherein the load monitoring condition includes information, regarding an item being monitoring, which computer of the computer system and which item of resources should be monitored and a threshold to be used for monitoring of the monitoring item (col 11, ln 15-30; col 12, ln 29-49; col 13, ln 3-10).

Smocha does not teach that the threshold value corresponds to a measured value of the item being monitored. Bertram teaches using a threshold value for an item being monitored (Bertram: col 11, ln 34-36). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Smocha to include the threshold of Bertram because using a threshold will allow the system to produce warnings to be sent to the user to enable them to improve the computer system (Bertram: col 3, ln 27-34, col 9, ln 48-56, col 10, ln 42-50).

With respect to **claims 6, 22, and 23**, Smocha further teaches the load monitoring condition judgment support means relates to the load given to the results of measuring the resource situation inside the computer system (col 3, ln 8-32):

detects a resource item having responded well in conjunction with the load given and sets the resource item that responded well as the item being monitored (col 3, ln 36-39; col 10, ln 1-5),

determines the threshold as a criterion for monitoring the resource item, by calculating from the measured response (col 12, ln 7-15) or throughput (col 6, ln 48-53) and physical limitation (col 6, ln 35-37, ln 54-58).

With respect to **claims 2, 16 and 22**, Smocha further teaches the load monitoring condition includes (col 3, ln 8-32):

relating the load given from the outside to the results of measuring the resource situation inside the computer system (col 3, ln 36-39; col 10, ln 1-5);

thereby detecting a resource item having responded well in conjunction with the load setting (col 11, ln 50-62) rendering the resource item that responded well as the item being monitored (col 12, ln 16-23); and

determining the threshold, as a criterion for monitoring the resource item, by any of means of marginal performance calculated from measured response (col 12, ln 7-15) or throughput (col 6, ln 48-53).

With respect to **claims 3, 17, and 24**, Smocha further teaches the limitations of parent claims 2, 5 and 21 wherein determining the load monitoring condition includes: in the case where the results of measuring the response or throughput show the marginal performance, determining the threshold based on the results of measuring the resource situation of the resource item that responded well in conjunction with the load (col 12, ln 7-23).

With respect to **claims 13 and 23**, Smocha further teaches all the limitations of parent claim 1 wherein determining the load monitoring condition includes:

relating the load given externally to the results of measuring the resource situation inside the computer system (col 3, ln 36-39; col 10, ln 1-5);

thereby detecting a resource item having responded well in conjunction with the load setting the resource item that responded well as the item being monitored (col 11, ln 50-62); and



determining the threshold, as a criterion for monitoring the resource item, by physical limitation calculated from the results of measuring the resource situation (col 6, ln 35-37, ln 54-58).

With respect to **claims 14, 18, and 25**, Smocha further teaches the load monitoring condition determination method according to parent claim 13 as shown above, wherein determining the load monitoring condition includes:

in the case where the results of measuring the resource situation of the monitored resource item show the physical limitation, determining the threshold based on the physical limitation of resource item having responded well in conjunction with the load (col 6, ln 35-37, ln 54-62; col 11, ln 19-22).

With respect to **claim 20**, Smocha further teaches the load monitoring condition determination system according to parent claim 5 as shown above, comprising threshold monitoring means for performing the load monitoring of the computer system using the determined load monitoring condition (col 11, ln 20-23; col 12, ln 29-39).

With respect to **claim 27**, Smocha further teaches determining the load monitoring condition including:

presenting, to a system administrator, information on the amount of load given to the computer system, the results of measuring the response or throughput and the results of measuring the resource situation inside the computer system (col 11, ln 5-30; col 12, ln 1-6); and

having part or all of the load monitoring conditions optimum for load monitoring of the computer system selected by the system administrator and setting the selected information as the load monitoring conditions (col 9, ln 63 – col 10, ln 10; col 12, ln 29-32; col 13, ln 3-10).

With respect to **claims 15, 19, and 26**, Smocha does not teach predicting values. Bertram teaches that if the results of measuring the response or throughput do not show the marginal performance and the resource determined as the monitoring item does not show the physical limitation (Bertram: col 5, ln 56-65), predicting the marginal performance of the response or throughput from the results of measuring the response or throughput (Bertram: col 10, ln 41-54), predicting the resource situation of the monitoring item at the predicted marginal performance of the response or throughput from the results of measuring the resource situation inside the computer system (Bertram: col 10, ln 55-58), and determining the threshold based on the predicted resource situation (Bertram: col 11, ln 23-37). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Smocha to include the prediction model of Bertram et al. because predicting a resource situation

will allow the system to produce warnings to be sent to the user to enable them to improve the computer system (Bertram: col 3, ln 27-34, col 9, ln 48-56).

### ***Response to Arguments***

5. Applicant's arguments filed October 3, 2007 have been fully considered but they are not persuasive.

Applicant argues that Smocha does not teach "measuring a resource situation, other than the response or the throughput from the step of measuring a response or throughput;" however, Applicant's arguments are not well taken. Smocha teaches in column 6, lines 48-53 that various monitors are measured as performance metrics. These monitors include measuring a response and measuring throughput as is now excluded by Applicant's amendments, but they also include "the number of successful transactions per second by the server, the number of failed transactions per second, ... and such other measurements as would be known to one of skill in the art." Therefore the newly amended independent claims of measuring a resource situation other than the response or the throughput is met by the number of successful or failed transactions.

Applicant argues that Smocha fails to teach "determining a load monitoring condition used for the load monitoring of the computer system from the amount of load given to the computer system, the results of measuring the response or throughput and the results of measuring the resource situation inside the computer system;" however, Applicant's arguments are not well taken. Taking the broadest reasonable

interpretation, the load monitoring condition is the condition that the system is in under varying load conditions. Smocha determines the condition of the system being tested based upon the amount of load given to the system (col 4, ln 47-50); the results of measuring the response or throughput (col 6, ln 48-53), and the results of measuring the resource situation inside the computer (col 6, ln 48-53). *All three* factors contribute to the load monitoring condition of the system (col 6, ln 54-62). Smocha describes running test patterns on various monitors using differing loads (col 6, ln 54-62).

Applicant argues that Smocha does not teach determining a criterion for monitoring *in the future*, but instead related to eliminating certain values within a set of data that *has already been collected*" (Applicant's remarks 10/01/07 from page 17, ln 18-19); however, Applicant's arguments are not well taken. There is nothing claimed that states determining a criterion for monitoring *in the future*. What is claimed is performing load monitoring on only the load monitoring condition, or conditions, determined during the load monitoring condition determining step. This can be interpreted to mean that calculations are only carried out for measurements that are determined significant. It is also noted that this limitation could be given very little weight as it could be interpreted to merely restate the previous limitation wherein the load monitoring condition which is being determined is merely the condition that the system is in under varying load conditions. In the latter interpretation, the limitation is merely stating that load monitoring is occurring. Neither interpretation requires that a criterion must be determined for monitoring in the future.


**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janet Suglo whose telephone number is 571-272-8584. The examiner can normally be reached on Monday - Thursday from 6:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eliseo Ramos-Feliciano can be reached on 571-272-7925. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Janet L Suglo  
November 24, 2007

  
**HAL WACHSMAN**  
**PRIMARY EXAMINER**  
